

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT SONGEA

LAND APPEAL NO. 02 OF 2022

*(Originating from the Decision of the District Land and Housing Tribunal of Songea
District at Songea in Land Application No. 98 of 2018)*

RASHID SHAIBU MUSSA APPELLANT

VERSUS

REHEMA FIDDU SHAIBU 1ST RESPONDENT

FATUMA FIDDU 2ND RESPONDENT

RAJABU SWAI 3RD RESPONDENT

AJIBU HEMEDI 4TH RESPONDENT

BONIFACE JOEL 5TH RESPONDENT

SADIQ SELEMANI 6TH RESPONDENT

JUDGMENT

Date of last order: 22/11/2022

Date of judgment: 24/11/2022

UE. Madeha, J.

The Appellant was the applicant before the District Land and Housing Tribunal of Songea at Songea in Land Application No. 98 of 2018. Before the Trial Tribunal, the Appellant claimed to be declared the lawful owner of

the house located at Block E, Plot No. 3, within Songea Municipality. Also, he requested for a declaration that the Respondents are trespassers as they have been staying on the land in dispute without lawful permission from the appellant. Additionally, an order that the Respondents must vacate the suit land and the costs of the application.

On the same note, in his sworn testimony the Appellant stated that he bought the house from Mohamed Makinda and Hamisi Makinda and he tendered a sale agreement which was admitted as an exhibit P1. It was not in dispute that the name of the buyer on the sale agreement (exhibit P1) is not actually the Appellant's name. The sale agreement bears the name of the Appellant's younger brother that is none other than Athmani Shaibu Mussa, who died in the year 1994.

In addition, the Appellant testified that he is the lawful administrator of the estate of his young brother; one Athman Shaibu Mussa. At the same time, he claimed that the house which the Respondents are using is his property and not the property of the deceased, even if the sale agreement shows that the owner or the buyer is the late Athman Shaibu Mussa.

After a full trial, the Trial Tribunal found the Appellant has failed to prove his claim because the sale agreement (exhibit P1) which was tendered by the Appellant shows that it is the property of the late Athmani Shaibu Mussa and the Appellant was present and he witnessed the sale agreement. In fact, the Appellant was suing it in his own capacity and not as the administrator of the estate of the late Athmani Shaibu Mussa. At the District Land and Housing Tribunal for Songea, the application was dismissed, hence this appeal.

This appeal was canvassed through written submissions. Basically, the Appellant was represented by none other than the learned advocate Mr. Edson Mbogoro. On the other hand, the first and second Respondents has no representation, they appeared in person. The third, fourth, fifth and sixth Respondents failed to enter appearance to defend this appeal despite of being properly served with the summons.

It is worth considering that, Mr. Mbogoro the learned advocate submitted that the petition of appeal is made up of only one (01) ground of appeal, which is to the effect that; the District Land Tribunal misdirected itself in law and in facts by abdicating from its duty of determining the issue of who was the lawful administrator of the estate of the late Athmani

Shaibu Mussa. On the same note, he argued that this was the (2nd) second issue framed by the Tribunal for the determination. Furthermore, he submitted that the duty to frame issues is upon the Court, part or their advocate merely propose on them. In that regard, the duty to frame issues to the Court is provided under Order XIV Rule 5 of the Civil Procedure Code Act (Cap 33, R.E 2022) which for easier reference is reproduced verbatim hereunder;

"At the first hearing of the suit the Court after reading the plaint and the written statement of defence if any, and after such examination of the parties as may appear what material proposition of facts or of law the parties are at variance, and shall thereupon proceed to frame and records the issues on which the right decision of the case appear to depend (underlined is his opinion,)"

To add to it, he further submitted that the allegation of facts and its denial should be framed as an issue that has to be settled by the Court before the hearing of the case commences. In that regard, the Tribunal advanced the argument that it had no jurisdiction to determine the issue of who is the administrator of the estate of the late Athmani Shaibu Mussa and ordered the issue to be referred to a court of competent jurisdiction.

Moreover, the chairman of the Tribunal stated that it could have been correct if either of the parties had lodged a petition for the appointment of the administrator of the estate of the late Athmani Shaibu Mussa before the said District Tribunal. Notably, he contended that if that had been the case, the petition would have been rejected at the admission stage.

Basically, he stated that the issue of who is the lawful administrator of the estate of the late Athmani Shaibu Mussa arose out of and from the proceedings of the parties. Eventually, he stated that in the application before the Tribunal, the applicant, inter alia, alleged that he was the administrator of the estate of the late Athmani Shaibu Mussa and annexed in his pleadings a copy of the relevant record of the administration, which was produced and tendered as an exhibit P2. Furthermore, he contended that the Respondents in their written statement of defence stated that he is the lawful administrator of the estate of the late Athmani Shaibu Mussa. He averred that, they did not annex a copy of the letters of administration. Even though, the Respondents told the tribunal that they would call Omary Athmani Shaibu as one of the witness but they fail to call him.

To crown it all, he averred that the District Land Tribunal had to determine the issue of who was the lawful administrator of the late

Athmani Shaibu Mussa estate on the basis of the evidence adduced. He stated that the effects of abdication to determine a frame issue was tantamount to amending the pleadings without the application of the parties. For more emphasize he cited the case of **KLM Royal Dutch Airlines v. Jose Xavier Ferreira** (1994) TLR 230. Lastly, he stated that as the first appeal is by way of retrial, he prayed that this appeal to be allowed and on the basis of the evidence adduced before the Tribunal, this Court should determine the said issue.

On the contrary, the first and second Respondents submitted that the Tribunal was correct to decide the matter and refrained from deciding the issue on who is the lawful administrator of the estate of the late Athmani Shaibu Mussa. Similarly, they further averred that as correctly pointed out by the Appellant in his written submission, the Respondents did adduce that the lawful administrator of the deceased's estate is Omary Shaibu Mussa. Although he was not summoned as a witness in the Trial Tribunal. Likewise, they further averred that if the issue was framed, then the same should have involved the Appellant and another party who claims administration of the deceased's property and not the Respondents.

It is worth considering that, the first (1st) and second (2nd) Respondents have emphasized on their submission that the decision of the Tribunal be withheld and if the Appellant wishes then he should institute the matter before the Courts of law which have the power to entertain and accommodate the same.

Having gone through the petition of appeal which encompasses one (1) ground and the submissions made by the Appellant's learned counsel and the first and second Respondents, I find that they boil down into two (02) issues namely: **Firstly**, whether the case before the Tribunal was a case of probate and administration of estates and; **Secondly**, whether the trial Tribunal framed an issue of who is the lawful administrator and abdicated it is duty to determine it.

To start with the first issues; that having gone through the proceedings and judgement of the case before the trial Tribunal I found that it was the claim for the house and the Appellant failed to prove his ownership. Thus, the case before the trial Tribunal was not the probate and administration of estate because the probate case was already heard and determined by the Primary Court of Mfaranyaki vide Probate Case No. 1 of 2016.

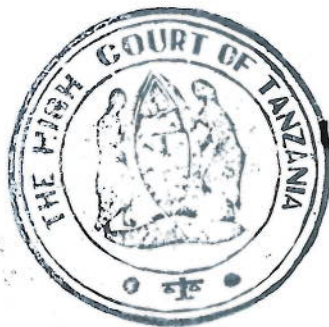
As a matter of fact, the case before the Tribunal was not a Probate Case but it was a claim of the deceased's (Athman Shaibu Mussa) house. The Appellant was required to submit evidence and exhibits to show how he obtained the disputed house to prove his ownership. Considering that the administrator of the estate is often not the heir, his main task is to distribute the deceased's property to the beneficiaries.

The second issue is whether the trial tribunal abdicated to determine the issues of who is the lawful administrator of the estate of the late Athman Shaibu Mussa, which was framed before the hearing of the application, it is correct that the issue was framed. Principally, it is important to note that the District Land and Housing Tribunal has no power to determine issues regarding the administration of the deceased's estate as it was correctly decided in the Probate and Administration Cause No. 8 of 2016. Having gone through the proceedings and judgement of the trial Tribunal, I found that the issue was properly determined and the tribunal clearly stated that the trial Tribunal has no jurisdiction to decide who is the lawful administrator of the estate of the late Athman Shaibu Mussa. The trial Tribunal further stated that its jurisdiction is clearly governed under

section 33 (1) (a) and (b) of the Land Disputes Courts Act (Cap. 216, R.E 2019).

For the foregoing, it is my considered opinion that this appeal has no merit and consequently I proceed to dismiss it. I give no order to costs. It is so ordered.

DATED and **DELIVERED** at Songea this 24th day of November, 2022.



A handwritten signature in blue ink, appearing to read "U.E. Madeha", is written over a horizontal line.

U.E MADEHA

JUDGE

24/11/ 2022

